

DATE: March 14, 2005

FILE REF: WA-10-05

TO: Natural Resources Board

FROM: Scott Hassett

SUBJECT: Recommendation to Authorize Public Hearings for Repeal and Recreation of the NR 600 Rule Series and ch. NR 590, Hazardous Waste and Used Oil Management Rules – Board Order No. WA-10-05.

1. Why is the Rule Being Proposed?

The proposed rules will replace and update current rules that regulate the generation, transportation, recycling, treatment, storage and disposal of hazardous waste and used oil. The proposed rules include new state rules based on federal hazardous waste regulations already in effect, and revise current rules to more closely parallel the format and content of the federal regulations. The Department is required to adopt rules that are at least equivalent to US EPA's RCRA regulations in order to maintain Wisconsin's authorization to administer the federal hazardous waste program. The proposed hazardous waste rule revisions are intended to:

1. Provide an easier to understand set of requirements,
2. Eliminate out-dated provisions and replace them with updated EPA regulation language,
3. Provide consistency with other states in our region that have adopted EPA regulations,
4. Reduce the regulatory burden through paperwork reductions for businesses, facilitate legitimate recycling and flexibility in design and operation of hazardous waste facilities, and
5. Generate sufficient revenue to administer the program.

The Hazardous Waste rules were originally adopted as ch. NR 181 on August 1, 1981. There have been five major revisions to the rules since that time, with the last becoming effective on June 1, 1998.

The development of the proposed rule revisions was a lengthy process, beginning almost three years ago and involving numerous staff. The first step was to 'translate' the federal regulation language using Wisconsin rule drafting conventions. After the rules were translated, staff carefully reviewed and compared the draft translated rule language with the comparable existing rule and recorded differences between these rules on an electronic summary table.

Staff reviewed the two sets of rules and relevant state statutes, and recommended whether or not to adopt the draft translated rule language, keep the existing rule (and add it to the draft), or amend one or both, according to a set of specific criteria developed for this process. A rule subteam was assigned the responsibility of reviewing the staff recommendations and revising the draft rules, as necessary. The first draft of the rules was placed on the Department web page, to allow input from the public and Department staff. Staff responded to comments, and made several revisions to the draft rules.

2. Summary of the Proposed Rule Revisions.

The proposed rules contain a comprehensive update to the state's hazardous waste rules. This update

is intended to align Wisconsin's hazardous waste rules (NR 600 series) and the Used Oil rule (ch. NR 590) with the federal regulations, both in substance and format. This is intended to reduce confusion to the regulated community, thereby increasing compliance with the rules.

A more detailed analysis of the proposed rule is included in the Board Order. That analysis summarizes each chapter and lists the areas that the proposed rule differs from its federal counterpart. For example, Wisconsin has state unique requirements for facilities that manage waste from household hazardous waste and very small quantity generators (see proposed rule, ch. NR 666 subpart HH). There is also a description of how the proposed rules differ from the current rules.

The rule package also includes a proposed increase to the hazardous waste plan review, license and manifest fees. The current hazardous waste fee schedule has been in place since 1994. Fee increases are proposed for two reasons. First, inflationary costs have affected salaries, fringe benefits, and supplies and services. Second, revenue from the hazardous waste fees approved in 1994 have never met expectations. Two new hazardous waste positions approved in the 2001-03 Biennial Budget were never filled because of lack of sufficient revenue. Based on current revenue and expenditure levels, we are projecting a deficit in the hazardous waste program revenue account at the end of FY2005. The Waste Management Program uses General Program Revenue (GPR), Program Revenue and federal grant funding to cover the costs of operating the hazardous waste program in Wisconsin. Through the last several biennial budget cycles, the amount of GPR available to the Waste Management Program has decreased. In addition, the amount of hazardous waste federal funding we receive from EPA has remained at the same level since FY1995, and was actually decreased in FY2005. As a result, we are no longer able to cover the costs necessary to operate the hazardous waste program.

If we are not able to bring in additional revenue, the Waste Management Program will need to reduce staffing levels. This will affect our ability to continue our current level of hazardous waste plan review, inspections, complaint response, and technical assistance we provide to our customers and stakeholders. These activities ensure that hazardous waste facilities are managed in ways that protect human health and the environment. Mishandling of the generation, transport and disposal of hazardous waste can cause serious threats to human health and the environment through soil and groundwater contamination. Preventing pollution through proper management of hazardous wastes is a good investment. Reducing staff available to work on hazardous waste management activities will also affect our ability to maintain Wisconsin's hazardous waste program authorization from EPA. Being an authorized state allows hazardous waste facility owners and operators to work directly with department staff who are familiar with and located near their facilities. If Wisconsin lost its program authorization, the hazardous waste management activities in Wisconsin would be carried out by federal EPA staff. Reduced staffing levels would also result in Wisconsin not being able to earn the federal grant money we currently receive from EPA, which would cause a further reduction in federal funding available to us.

We are proposing an increase to all hazardous waste plan review and license fees effective October 1, 2006. The majority of the proposed fee increases represent about a 3% increase per year since 1994 to account for inflation. A few of the proposed fees represent a higher percentage increase and there are some fees that are decreasing or being eliminated. In addition, we are proposing to add a per vehicle fee to the Transportation Service License fee. This will make the hazardous waste transportation license similar in structure to the solid waste transportation license. In addition, it will provide a

graduated fee to reduce the impact on smaller businesses. We are also proposing an increase in the Manifest Fee from \$2 to \$6 per manifest effective January 1, 2006. Wisconsin's manifest revenue at the \$2/manifest level has never generated sufficient funds to cover the costs of managing the manifest data. The current fees are roughly half of the revenue projected when the fee was implemented in 1994. Wisconsin's current manifest fee is also significantly below that of neighboring states. See Attachment A for detail on the current and proposed fees, along with explanations for the various levels of fee adjustments. Attachment B shows hazardous waste program revenue projections with the proposed fee increases in place.

3. How this Proposal Affects Existing Policy.

In general, the proposed rule revisions are not a major departure from existing policy, which is to protect public health and welfare from exposure to hazardous waste and used oil constituents. The proposed revisions do not change the basic policies that form the framework for the NR 600 series. They align our current rules with their corresponding federal regulations and add new rules to the state's hazardous waste management rules, to allow the state to retain authorization from EPA. See the Summary of Major Differences Between the Current and Proposed Rules Table, Attachment C, for more information.

4. Has the Board Dealt with These Issues Before?

Yes. The Natural Resources Board first adopted rules for the management of "toxic and hazardous waste" in the late 1960s as part of the Solid Waste rules. In 1981, a separate chapter for hazardous waste rules (NR 181) was established. In 1991, these rules were revised into the current NR 600 series. Throughout the history of the hazardous waste program, the Board has revised the hazardous waste management rules on numerous occasions to keep pace with state statutory changes and new federal regulations. The most recent major revisions to chs. NR 600 to 685 were in 1998.

5. Who Will be Affected by the Proposed Rule? How Will They be Impacted?

Businesses and individuals that generate hazardous waste and those that transport, recycle, treat, store or dispose of hazardous waste will be affected by the proposed rules. These individuals and businesses are already extensively regulated by state hazardous waste rules and federal regulations. Depending on the circumstances, the proposed rules may affect individuals and businesses differently. Because existing rules are being redrafted to more closely follow the format and content of the federal regulations, it will be easier for businesses that operate in multiple states to locate and comply with specific state requirements.

6. Information on Environmental Analysis, if needed.

Under the provisions of s. NR 150.03(6)(b)3.b., Environmental Analysis and Review Procedures for Department Actions, this is a Type III action, since the implementation will not have material adverse impacts on the human environment and the department has limited discretion in formulating important provisions of its rules. A Type III action does not require an EA or EIS, as stated in s. NR 150.20(1)(b)3.

7. Small Business Analysis. If Small Business is Impacted, Include Initial Regulatory Flexibility Analysis.

The proposed rules will directly affect small businesses that generate, transport, recycle, treat, store or dispose of hazardous waste and used oil. In general, the proposed rules will not result in substantial changes to the types of small businesses affected by the current hazardous waste rules. For more information, refer to the Initial Regulatory Flexibility Analysis in Attachment D.

Attach:

A Current and Proposed Fees

B Revenue Projections

C Summary of Major Differences Between Current and Proposed Rules

D Initial Regulatory Flexibility Analysis